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UNCLAS STATE 105452

E.O. 12958: N/A

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SUBJECT: RESPONSE TO UN SPECIAL RAPPORTEUR NOWAK:
GUANTANAMO BAY

¶1. (U) Following in paragraph 2 below is the text of a response to the UN Special Rapporteur on the Question of Torture, Mr. Manfred Nowak, regarding the situation of Mr. Abdullah Bin Omar Al Hajji and Mr. Lutfi Ben Swi Lagha. Mission is requested to convey this response to Mr. Nowak under cover of a diplomatic note. Text of the letter will also be emailed to post. This responds to item number 17 on the 2007 Geneva Special Procedures Log.

¶2. (U) BEGIN TEXT OF LETTER:

Mr. Manfred Nowak
Special Rapporteur on the Question of Torture
Geneva, Switzerland

Dear Mr. Nowak:

This letter responds to your correspondence of June 27, 2007 regarding Mr. Abdullah Bin Omar Al Hajji and Mr. Lutfi Ben Swi Lagha.

In the annex to its most recent report to the Committee Against Torture, the United States explained in extensive detail the process whereby individuals at Guantanamo Bay are captured, held, and released, as well as a description of conditions and treatment at the detention facility.

The report reaffirms that United States officials from all government agencies are prohibited from engaging in torture, at all times, and in all places. All United States officials, wherever they may be, are also prohibited from engaging in cruel, inhuman or degrading treatment or punishment against any person in United States custody, as defined by our obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (Convention Against Torture).

Finally, the report reiterates that, as a matter of policy, the United States does not transfer persons from Guantanamo to countries where it determines that it is more likely than not that they would be tortured.

The above-referenced materials are available at <http://www.state.gov/g/drl/rls/45738.htm>.

On the issue of diplomatic assurances, our practice is as follows: In appropriate circumstances, the Department of State obtains diplomatic assurances from countries to which transfers are being considered. The credibility of diplomatic assurances is evaluated considering the identity, position or other information regarding the official making the assurances, as well as relevant political, legal, and diplomatic circumstances. In appropriate cases the United States seeks access by governmental or non-governmental entities to verify the treatment of those who are transferred.

In all cases, the Department of State conducts an individualized determination as to whether a detainee can be transferred consistent with humane treatment policies, considering the totality of the circumstances. Our procedures are tailored to take into account individualized concerns that may be raised with respect to any transfer.

In cases where transfers are completed, we conduct post-transfer follow up as appropriate. Where we receive

credible reports that a country has mistreated a transferred detainee, we investigate those reports by engaging government representatives and other groups and individuals with relevant knowledge. These groups and individuals may include members of the NGO community, and representatives or associates of the individual in question. Any determination that a government failed to comply with its assurances would constitute a serious issue in the context of our bilateral relationship with that government and would, of course, have an adverse impact on our ability to do future transfers. Under our humane treatment policy, we would not be able to go forward with any future transfer to that country unless circumstances changed to a point where we could do so consistent with that policy.

Consistent with our policies as outlined above, the United States is engaged in appropriate follow-up with regard to the treatment of Mr. Bin Omar Al Hajji and Mr. Lutfi Ben Swi Lagha.

(complimentary closing)

RICE

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